THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.15009 OF 2007

Dated 29th October, 2007

Between:

M/s B.J.Services Company Middle East Limited …Petitioner

And

The Commercial Tax Officer and four others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.15009 OF 2007

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties.

The relevant assessment years for the purpose of this writ petition are 2004-2005 and 2005-2006. Counter has also been filed and we have also perused the record for the year 2004-2005.

Already assessment has been made for the year 2004-2005 and according to the petitioner against the said assessment, an appeal is filed, which has been heard and reserved for orders by the appellate authority. In this writ petition challenge is made to the attachment order, dated 02-07-2007, passed in terms of Section 27(2)(a) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act"). Although the impugned proceedings of attachment referred to Section 29 of the Act, but it appears that it was a typographical mistake, because Section 29 of the Act does not give any such power to the Commercial Tax Officer and it has been conceded by the learned Special Standing Counsel for Commercial Taxes that the impugned proceedings are under Section 27(2)(a) of the Act.

The facts of the case reveal that the amounts of the petitioner, which were due to him from respondent Nos.3 to 5 concerns, were attached. According to the petitioner, which resulted in attachment of three times the amounts, which were claimed by the Department. Therefore, when this writ petition came up before us earlier, we passed an order keeping intact the attachment of the funds of the petitioner in

one of the concerns i.e. the fourth respondent and attachment with respect to the funds of the petitioner with other two concerns was stayed. Learned counsel for the petitioner submits that power of the Commercial Tax Officer under Section 27(2)(a) of the Act is in the nature of an attachment before judgment and therefore, once an assessment order is made, Section 27(2)(a) of the Act has no relevance. There is no dispute of this proposition of law and we accordingly hold that the attachment with respect of the year 2004-2005 has become meaningless, as the final order of assessment has already been passed for that year. Still the attachment is relevant for the subsequent year i.e., 2005-2006 for which no assessment order has been passed so far. But the learned counsel for the petitioner submits that the attachment before assessment is not a routine matter and attachment orders can only be passed if the conditions laid in Section 27(2)(a) of the Act are complied with.

Sub-section (2)(a) of Section 27 of the Act lays down-

> "Where, during the pendency of any proceeding for the assessment or reassessment of any tax or turnover tax which has escaped assessment, the authority prescribed is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may with the previous approval of the Commissioner, by order in writing, attach provisionally in the prescribed manner any property belonging to the dealer."

It is abundantly clear from bare perusal of the provision that an order of attachment can be made where the prescribed authority frames an opinion that such order is necessary to be passed for the purpose of protecting the interest of the Revenue. We have seen the

record. From the records no authority, at any point of time, has framed any such opinion. Only the Commercial Tax Officer has written letters to the Deputy Commissioner requesting him to request the Commissioner to approve the attachment for the reason that there is likelihood of raising heavy demands when assessment orders are passed. This, in our view, cannot be a reason for ordering an attachment under Section 27(2)(a) of the Act.

Therefore, we allow the writ petition, quash the impugned proceedings of attachment dated 02-07-2007. However, the Department would be free to look into the matter afresh and pass appropriate orders in accordance with law, if they so desire. No order as to costs.

_____

Bilal Nazki,J

Dated 29th October, 2007

_____

Ramesh Ranganathan,J

Note: Issue C.C in one week
vrn